89-495

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

JULIET BAIRD ALEXANDER, PETITIONER

V.

MASSACHUSETTS LABOR RELATIONS COMMISSION,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO

THE MASSACHUSETTS SUPREME JUDICIAL COURT

APPENDIX

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SEPTEMBER 25, 1989

111 pp

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S-4964 S.J.C.

JULIET BAIRD ALEXANDER

VS.

LABOR RELATIONS COMMISSION

April 27, 1989

Labor Relations Commission. Labor, Judicial review.

This is an appeal from a prehearing dismissal, after an investigation, by the Labor Relations Commission (commission) of consolidated charges filed by Juliet Baird Alexander alleging prohibited labor practices. The first charge was against her employer, the Chief Administrative Justice of the Trial Court (employer), alleging violations of G. L. c. 150E, & 10 (a) (1)-(5) (1986 ed.), through a unilateral change in workplace and conditions of employment by providing computer assisted transcription (CAT) equipment to some of the official court reporters in Plymouth County. The second

charge alleged violations of G. L. c. 150E, & 10 (b) (1)-(3) (1986 ed.), by Alexander's exclusive representative for collective bargaining, Office and Professional Employees International Union, AFL-CIO Local 6 (union), in failing to act fairly to represent Alexander and others over the issue of the CAT equipment installation. The commission held an investigation, pursuant to G. L. c. 150E, & 11, and 456 Code Mass. Regs. & 15.04 (1986), following which it decided not to issue a complaint, and notified the parties that it was dismissing the charges. On request by Alexander that it review its determination, the commission reconsidered and subsequently affirmed the dismissal. Alexander appealed and we transferred the case to this court on our own motion. We affirm the decision of the commission.

A prehearing dismissal is a "final

order" reviewable under G. L. c. 150E, & 11. Quincy City Hosp. v. Labor Relations Comm'n, 400 Mass. 745, 747 (1987). In our review of a prehearing dismissal, we are mindful that the commission has broad discretion under the statute to resolve complaints, id. at 748, and that the charging party has the burden before the commission of establishing that the prohibited practice occurred. Id. at 749. The record before us clearly supports the commission's determination that there was insufficient evidence to show either that the union breached its duty fairly to represent Alexander or that the employer violated c. 150E through installation of the CAT equipment. On a challenge of the commission's decision, the charging party must demonstrate that the commission's action was invalid. See Quincy City Hosp. v. Labor Relations Comm'n, supra at 749-750, and cases

cited. Alexander's allegations on appeal amount to a belabored reiteration of her arguments to the commission along with conclusory statements which, at most, question the weight and credibility of the evidence. We conclude that the commission acted within its discretion in dismissing the charges without a hearing.

Order of the Labor Relations Commission affirmed.

Juliet Baird Alexander, pro se.

John B. Cochran (Gene M. Switzer with him) for the defendant.

January 25, 1988

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Justice
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Boston, MA 02108

Juliet Baird Alexander
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Sharon, MA 02067

David Rome, Esq.
44 School Street
Boston, MA 02108

RE: SUP-3157 & SUPL-2414
Commonwealth of Massachusetts
Administrative Justice Trial
Courts/OPEIU L.6. and
Juliet B. Alexander

Dear Sir or Madam:

Please be advised that the Commission, Commissioners Maria C. Walsh and Elizabeth K. Boyer participating, decided to dismiss the charges filed in the captioned cases. The evidence adduced at the investigation indicates that the Employer decided unilaterally to implement a "pilot program" in approximately June, 1986, under which the Employer would provide Computer Assisted Transcription (CAT) equipment to stenotypists in certain courts, among them the Plymouth County Courthouse, in order to determine whether such equipment ought to be installed statewide. The evidence further indicated that, during the several months prior to June, 1986, the Employer, as well as certain subcommittees set up by the Union, were exploring the nature and feasibility of various CAT equipment for both

stenotypists and "voice" court reporters. The Union's steward during this time was Wayne Sawyer, a typist; during the months prior to June, 1987, Sawyer was actively involved in selecting and setting up the pilot program in the Plymouth County Courthouse. The Charging Party alleges that the Union's conduct harmed the Charging Party and thereby violated the Union's duty to fairly represent her. She asserts that the Union was influenced to act the way it did by Wayne Sawyer who, she alleges, had a personal pecuniary interest in this matter.

In March and May, 1986, the Massachusetts Superior Court Reporters Association (Association), an unofficial organization of bargaining unit members, but not an agent of the Union, voted against the implementation of any CAT equipment in the courts and advised the Employer in writing of their wishes.

Sawyer was present at both of these meetings. In June, 1987, the Association's Board of Directors discussed the pilot program and decided to send the Employer a letter, over Wayne Sawyer's signature, seeking more information on the pilot program. After the Employer responded, Sawyer sent another letter on behalf of the Association demanding, inter alia, "to be included in the decision-making process..." and to meet with the Employer "as soon as possible to resolve these problems."

The evidence further establishes that in early July, 1987, charging party Juliet Alexander, a voice reporter, became aware of the pilot CAT equipment being utilized by stenotypists in the court to which she was assigned. She confronted union steward Sawyer about this situation, since the court reporter had voted against implementing such equipment changes. In

the course of a heated discussion between Alexander and Sawyer, Sawyer offered Alexander grievance forms. However, Alexander chose not to pursue a grievance. After another confrontation with Sawyer a few days later, Alexander attempted unsuccessfully to reach the Union's business agent by telephone and eventually, on July 15, 1987, wrote the business agent a letter demanding that the Union file a prohibited practice charge against the Employer based on the implementation of the CAT equipment. The Union responded by letter dated July 30, 1987, stating that the pilot program in the Plymouth Courthouse was installed in response to a proposal of the stenotypist subcommittee of the Union, that the voice writers had an opportunity also to submit proposals for CAT equipment, and that "it does not appear that the voice writers have been deprived of benefits afforded to

stenotypists." Alexander than filed the instant charges with the Commission. Subsequently, at the Union's meeting in the fall of 1987, the Union decided it would demand to bargain with the Employer before any permanent CAT equipment is installed in the courts. The Union has set up a bargaining committee to deal with this issue.

The Charging Party contends that the Union has breached its duty of fair representation by discouraging her from grieving the installation of the CAT equipment and by failing to contest the Employer's unilateral implementation of the pilot program because of the Union steward's personal and pecuniary interest in having CAT equipment available for stenotypist court reporters. The evidence submitted at the investigation suggests that Sawyer accurately conveyed the court reporters' collective concerns to the

Employer and took no action to prevent the Employer's consideration of voice writer technology. Moreover, in view of the Union's decision to demand bargaining prior to the installation of any permanent CAT equipment, the Commission does not find probable cause to believe that Sawyer's personal interests have impeded the Union's conduct in protecting the interests of bargaining unit members, including voice writers such as Alexander. Alexander decided not to file a grievance, although offered an opportunity to do so by the Union; consequently, the evidence does not establish probable cause to believe that the Union has breached its duty to fairly represent Alexander in processing a grievance. Accordingly, the charges alleging violations of Section 10(b) (1) are dismissed.

Alexander also charges that the

Employer has violated Sections 10(a) (1) (2) (3) (4) and (5) of the Law by, in sum, conspiring with Sawyer (and thereby with the Union) to implement CAT equipment to benefit stenotypists but not voice writers, by discriminating against voice writers in their terms and conditions of employment, and by unilaterally altering the working conditions of unit members. Although the Employer may have unilaterally changed its employees' working conditions by introducing a pilot program, the Union has not protested the change insofar as it relates to the "pilot program." A union may lawfully decide to permit a change in working conditions as long as its conduct is not arbitrary, unlawfully motivated or inexcusably negligent. Since the evidence is insufficient to establish probable cause to believe that the Union's decision not to challenge the pilot program was taken

in bad faith or otherwise violative of its duty of fairness representation, Alexander has no standing to assert the Employer's refusal to bargain in this respect. We find insufficient evidence to conclude that the Employer conspired with the Union to circumvent the wishes of the majority of court reporters or that the Employer otherwise interfered with or dominated the Union or discriminated against any employees because of their union activity. Accordingly, the charges alleging violations of Sections 10(a) (1) (2) (3) (4) and (5) are dismissed. Based upon the reasons stated above, the Commission declines to proceed to complaint in these cases and the charges are dismissed.

Very truly yours,

LABOR RELATIONS COMMISSION

Ann Moriarty

Executive Secretary

AM/ppw

The charging party may, within seven (7) days of receipt of this notice, seek a review of this determination by the Commission, pursuant to MLRC Rules 456 CMR 15.04(3). The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. The charging party shall serve a copy of the request on the opposing party or its counsel, if any.

April 4, 1988

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SUP-3157, SUPL-2414
Commonwealth of Massachusetts

Gentlemen and Ms. Robinson:

Please be advised that the

Commission, Commissioners Maria C. Walsh and Elizabeth K. Boyer participating, have granted the request for reconsideration filed by the Charging Party, but upon reconsideration decided to affirm the prior dismissal for the reasons previously stated. The Commission notes, however, that it inaccurately referenced a "Union meeting in the fall of 1987." Charging Party has objected to that statement. It appears that the reference should have been not to a Union meeting in the fall of 1987, but rather to the evidence that established that the Union, in the fall of 1987, informed the court reporters that the Union had decided to demand bargaining before any permanent CAT equipment was installed. The Charging Party lists other objections to the Commission's dismissal letter but Charging Party's submission is insufficient to establish probable cause to believe that the Law has been violated,

as alleged. Accordingly, for the reasons stated in the prior dismissal letter, the Commission declines to proceed to complaint and the charge is dismissed.

Very truly yours,
LABOR RELATIONS COMMISSION

Ann Moriarty
Executive Secretary

AM/ppw

Pursuant to the Supreme Judicial Court's decision in Quincy City Hospital v. Labor Relations Commission, 400 Mass. 745 (1987), this determination is a final order within the meaning of G.L.c.150E, Section 11. Any party aggrieved by a final order of the Commission may institute proceedings for judicial review in the Appeals Court pursuant to G.L.c.150E, Section 11. To claim such an

appeal, the appealing party must file a Notice of Appeal with the Labor Relations Commission within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.

COMMONWEALTH OF MASSACHUSETTS

In the Matter of:

JULIET BAIRD ALEXANDER Court of Appeals

V. No. A.C. 88 p-646

Labor Relations

Commission

AFFIDAVIT OF

JULIET BAIRD ALEXANDER

I, Juliet Baird Alexander, do hereby swear and affirm the following:

In August of 1987 and, again, in October of 1987, I had telephone conversations with the Officer of the Day and with Anne Moriarty, Secretary of the Labor Relations Commission. During these telephone conversations, I made the following three requests:

1) I requested permission to have a stenographer present, at my own expense,

at the hearing in order to take down the record of the proceedings. This request was denied.

2) I requested permission to bring a tape recorder, at my own expense, to provide a tape record of the proceedings. This request was denied.

3) I requested permission to have a fellow reporter present at the hearing to observe the proceedings. This request was denied.

Signed and sworn to under the pains and penalties of perjury this
day of November, 1988.

Signed before me this 15th day of November, 1988.

_____ _____

NOTARY PUBLIC Juliet B. Alexander

COMMONWEALTH OF MASSACHUSETTS

LABOR RELATIONS COMMISSION

LIST OF DOCUMENTS CONSTITUTING

ADMINISTRATIVE RECORD NO. SUP 3157

DATE	NO.	
8/11/87	1	Charge filed by Juliet Alexander (A Case Consolidated with SUPL-2412. See SUPL-2414 for continuation of list of documents constituting administrative record)

A true copy

ATTEST

_____

Ann Moriarty

Executive Secretary

LIST OF DOCUMENTS CONSTITUTING

ADMINISTRATIVE RECORD NO. SUPL-2414

DATE	NO.	
8/11/87	1	Charge filed by Juliet B. Alexander
11/9/87	2-18	Documents marked 1-15 (including 4b and 11a) presented at investigation by J. Alexander
11/9/87	19	Affidavits of Juliet Alexander with attachments A-E
11/19/87	20	Additional affidavits (4pp) of Juliet Alexander
11/9/87	21	Affidavits of Carol Tinkham (2pp)
11/9/87	22	Summary statement filed by Juliet Alexander
11/9/87	23	Documents marked 1 presented at

		investigation by O.P.E.I.U., Local 6
11/13/87	24	Letter of position filed by O.P.E.I.U., Local 6
11/13/87	25	Affidavit of Wayne Sawyer filed by O.P.E.I.U., Local 6
11/13/87	26	Affidavit of Gail Farrish filed by O.P.E.I.U., Local 6
1/4/88	27	Supplemental affidavit of Gail Farrish filed by O.P.E.I.U., Local 6
1/25/88	28	Dismissal letter issued by Commission
2/5/88	29	Request for review filed by Juliet Alexander
2/11/88	30	Letter from O.P.E.I.U., Local 6 filed
4/4/88	31	Affirmance of dismissal issued by Commission
4/27/88	32	Notice of appeal filed by

Juliet Alexander

6/3/88 Record assembled. Notices sent to Juliet Alexander, Ilene Robinson and David Rome. Notice under Appellate Rule 9(d) mailed to Clerk, Appeals Court, along with two (2) certified copies of docket entries.

A true copy

ATTEST

_____

Ann Moriarty

Executive Secretary

EXCERPTS FROM THE COLLECTIVELY BARGAINED AGREEMENT BETWEEN OPEIU LOCAL 6 AND THE ADMINISTRATIVE CHIEF JUSTICE OF THE TRIAL COURT, ADMINISTRATIVE RECORD #19, (EXHIBIT B)

Section 1.01. The Chief Administrative Justice recognizes the OPEIU, AFL-CIO Local 6 as the exclusive bargaining representative of all non-professional staff and clerical employees.

Section 17.02. The regular work week of full-time employees is 37 1/2 hours, normally consisting of five days of 7 1/2 hours per day occurring between the hours of 7 AM and 5 PM, depending upon Court hours and the needs of a particular Court/department as determined by the employer.

Nothing in this article is intended to

limit the authority of the Administrative Justice in determining court hours and employees shall work the hours needed or required by the operational needs of a particular court.

Section 17.03. An employee who is subject to the overtime provisions of the Fair Labor Standards Act as amended, (FSLA) will receive compensatory time off in lieu of pay for overtime actually worked after April 15, 1986.

The immediate manager is responsible for the maintaining of records necessary to administer the provisions of this article and the FSLA.

Section 17.03(A)
Accrued compensatory time resulting from overtime work performed prior to April 15, 1986, is not subject to the provisions of

the FSLA.

EXCERPTS FROM RULES AND REGULATIONS GOVERNING SUPERIOR COURT REPORTERS, ADMINISTRATIVE RECORD #19, (EXHIBIT A)

Each reporter shall be entitled to retain the fees collected for transcripts, but all supplies and equipment shall be furnished by the reporter at his own expense.

It is the duty of court reporters to take verbatim all that is said during every court proceeding, including reference to all exhibits, and, when a transcript is ordered, to accurately transcribe what was said.

Every court reporter shall furnish the Chief Justice on or before

January 15th of each year with a report relating to his employment, transcripts and charges therefore for the previous calendar year.

. . .

Whenever a transcript has not been completed within thirty (30) days from the date it was ordered, the Chief Justice may relieve a court reporter of his assignment and provide a substitute at the reporter's expense until such time as the transcript is completed.

Every court reporter shall be paid for furnishing a transcript of his notes of any proceeding in the trial of a case or any part thereof, according to the rates provided by statute.

No court reporter shall receive any gratuity or compensation in excess of that

provided for by statute from any person for any transcript of his notes.

All stenotype tapes, tape recordings and original shorthand notebooks containing any notes of the trial or hearing of a case shall be the property of the court.

EXCERPTS FROM AFFIDAVIT OF GAIL FARRISH (SUBMITTED TO COMMISSION BY OPEIU, LOCAL 6) ADMINISTRATIVE RECORD #26

I, Gail Farrish, do hereby depose and say:

(1) I was the Chairperson of the Massachusetts Superior Court Reporters Association (MSCRA) for two (2) years prior to May of 1987, and at all times material to this case.

(3) In the fall of 1986, at least a month

before the regularly scheduled meeting of the MSCRA, which was scheduled for October 31st in Westboro, I was informed by Mary Jane Moreau, an attorney working in the office of the Chief Administrative Justice, the Employer, that the Trial Court was willing to purchase a number of computer-assisted transcription systems (CAT) for the use of permanent court reporters. As a result of learning this, I brought the letter which I had received from Mary Jane Moreau to the attention of the membership of the association (a copy of this letter is attached as Exhibit #1 dated October 17, 1986) and recommended to the group that we form a committee to meet with management and to prepare proposals for the introduction of CAT equipment into the system.

(4) At the (MSCRA) membership meeting a committee was formed.

(6) Prior to January 1, 1987, the

committee formed at the October 31st meeting, was in telephone communication and there was at least one meeting with management.

(14) At our meeting (3/14/87) it was voted that the Superior Court should not provide individuals with computers to aid in the preparation of transcripts. I communicated the Association's views on this to Henry Bar, the Administrator of the Courts, by letter of March 19, 1987, a copy of which is attached to this affidavit as Exhibit #3.

Signed and sworn to under the pains and penalties of perjury, this twelfth day of November, 1987.

GAIL FARRISH

EXCERPT FROM ADMINISTRATIVE RECORD #12

(EXHIBIT 11/A)

The case reported was of approximately three hours duration. The time consumed in transcription was as follows:

(1) Shorthand 10-12 hours

(2) Stenograph 9-10 hours

(3) Open Mike 17-18 hours

(4) Stenomask 9-10 hours

EXCERPT FROM ADMINISTRATIVE RECORD #13

(EXHIBIT #12)

On this day Sawyer had completed three hours in Court. He hooked up his machine (called a stenoram) into the mainframe and "dumped" his Court notes into the mainframe which translated the notes. The process took only several minutes for the mainframe to translate Sawyer's notes.

After editing, the mainframe prints a clean copy of the transcript.

EXCERPTS FROM STATEMENT OF PROCEEDINGS PAGES 75 THROUGH 79 OF ALEXANDER'S RECORD APPENDIX SUBMITTED TO THE SUPREME JUDICIAL COURT

At the informal hearing held by the Massachusetts Labor Relations Commission at 100 Cambridge Street, Boston, Massachusetts, on November 9, 1987, the following people were present: Juliet Alexander, pro se; David Rome, Esq., for the Union; Ilene Robinson, Esq., for the Trial Court; Ms. Judy Neumann, Hearing Officer for the Labor Relations Commission; Phyllis Day, Business Agent for O.P.E.I.U.; Wayne Sawyer, Chief Union Steward; Greg Baler, Assistant Administrative Secretary to the Chief

Justice.

The following is an account of the pertinent oral testimony given by witnesses and statements by counsel as they occurred during the course of the 2 1/2 hour hearing to the best of Alexander's recollection.

By Alexander:

Official Reporters are a coherent, homogenous group of employees of the Trial Court who share a common supervision, similar work environment, job duties, assignments, hours worked and compensation.

Official reporters are all members of the same bargaining unit of O.P.E.I.U., Local 6.

Many official reporters work an estimated average of 20-30 hours a week at home producing transcripts ordered by the Trial Court.

Court reporters, including official court

reporters are considered, inappropriately, vendors or independent contractors with regard to any transcript production and are paid a statutory page rate per page of transcript produced. This payment is made through a voucher system of payment.

Official reporters have never been allowed to claim overtime compensation as provided by the Union contract because of this supposed vendor status.

Official reporters who have access to the CAT equipment, which is the subject of the complaint, are able to produce all of their transcripts completely within the 37 1/2 hour work week described in the Union contract.

These same reporters no longer have to expend their own monies to provide for equipment either to take down the record in court or to produce it in transcript form as required by the Rules and Regulations Governing Court Reporters of

the Superior Court.

These same reporters no longer have to expend their own monies to provide for the supplies necessary to produce transcripts.

These same reporters are paid the statutory page-rate for every page of transcript that is produced on CAT equipment.

Two fall and spring conferences each year are sponsored by the Office of the Administrative Chief Justice and the Massachusetts Superior Court Reporters Association, (MSCRA)

Official reporters are given the day off with pay to attend these meetings.

Attendance at these meetings is not limited to official reporters, but includes non-employee reporters as well as interested observers.

MSCRA holds its meetings at these conferences.

All votes pertinent to these charges were

taken by a show of hands without distinguishing who was an employee and who was not.

All official reporters who are members of the O.P.E.I.U., Local 6 bargaining unit are not all members of the MSCRA.

By Phyllis Day: (O.P.E.I.U. Business Agent)

Question: (By Ms. Neumann) When did you first become aware of the so-called pilot project which consisted of setting up CAT equipment for three reporters in Plymouth County?

Answer: (By Ms. Day) When I received Alexander's letter in July.